

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Michael D. Johnson,  
Complainant,

**NOTICE OF PARTIAL DETERMINATION  
OF PRIMA FACIE VIOLATION,**

vs.

**NOTICE OF PARTIAL DISMISSAL,**

Nancy Levitz, formerly known as Nancy  
Havlish, and the Levitz for City Council  
Campaign,

Respondent.

**AND**

**NOTICE AND ORDER FOR  
EVIDENTIARY HEARING**

TO: Michael D. Johnson, 7109 Jamaca Avenue North, Stillwater, MN 55082, and Nancy Levitz, and the Levitz for City Council Campaign, 10155 - 119<sup>th</sup> Street North, Grant, MN 55082.

On November 18, 2004, Michael D. Johnson filed a Complaint with the Office of Administrative Hearings alleging multiple violations of Minn. Stat. § 211B.06 in pieces of campaign material distributed by Nancy Levitz and Levitz for City Council Campaign Committee on October 12, 2004 and October 27, 2004. Nancy Levitz was a candidate for the City Council for the City of Grant in the General Election held on November 2, 2004. After reviewing the Complaint and attached documents, the undersigned Administrative Law Judge has determined that certain allegations within the Complaint set forth a prima facie violation of Minn. Stat. § 211B.06, while other allegations in the Complaint fails to set forth a prima facie violation of §211B.06.

**IT IS HEREBY ORDERED** that the following allegations are dismissed:

1. Michael Johnson alleged that the statement in the campaign material for Nancy Levitz and the Levitz for City Council Campaign, that Nancy Levitz appointment as a Planning Commission Member for the City of Grant, is false. Based upon the Complaint and council meeting minutes for the City of Grant dated December 3, 2002, Nancy Levitz was appointed to the Planning Commission. Although Nancy Levitz, also known as Nancy Havlish, did not actually serve in that position since the appointment was later rescinded, the Complaint fails to show prima facie evidence of a false statement. The allegation, labeled by the Complainant as 1.a., is dismissed.

2. Michael Johnson alleged that Nancy Levitz and the Levitz for City Council Campaign made false statements by stating the new road plan would “**DOUBLE OUR TAXES.**” This statement has not been shown to be false since documents attached to the Complaint could show taxes doubling for the levy or gravel and road expenses. The allegations, labeled by the Complainant as 1.a. and 2.b., are dismissed.

3. The Complaint alleged the statement, indicating the proposed tax increase would be used to pay off the road grader, was false. But the Revision of the Road Plan discusses purchase of a road grader. Even though the saving may be recouped from contracting the service, the statement is not false. The allegation, labeled by the Complainant as 2.d., is dismissed.

**IT IS FURTHER ORDERED** that the remainder of the allegations in the Complaint and accompanying documents provide sufficient prima facie evidence that Nancy Levitz and the Levitz for City Council campaign disseminated campaign material with false statements or statements that communicate to others with reckless disregard of whether the information is false.

**THEREFORE, IT IS HEREBY ORDERED AND NOTICE IS HEREBY GIVEN** that this matter will be scheduled for an evidentiary hearing to be held at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, Minnesota 55401, before three Administrative Law Judges. The evidentiary hearing must be held within 90 days of the date the complaint was filed, pursuant to Minn. Stat. § 211B.35. You will be notified of the date and time of the evidentiary hearing, and the three judges assigned to it, within approximately one week of the date of this Order. The evidentiary hearing will be conducted pursuant to Minnesota Statutes § 211B.35. Information about the evidentiary hearing procedures and copies of state statutes may be obtained online at [www.oah.state.mn.us](http://www.oah.state.mn.us) and [www.revisor.leg.state.mn.us](http://www.revisor.leg.state.mn.us).

At the evidentiary hearing all parties have the right to be represented by legal counsel, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law. In addition, the parties have the right to submit evidence, affidavits, documentation and argument for consideration by the Administrative Law Judge. Parties should bring with them all evidence bearing on the case with copies for the Administrative Law Judge and opposing party.

At the conclusion of the evidentiary hearing, the Administrative Law Judges will choose to: (1) dismiss the complaint, (2) issue a reprimand, (3) find a violation of 211B.06, and/or (4) impose a civil penalty of up to \$5,000. The panel may also refer the complaint to the appropriate county attorney for criminal prosecution. A party aggrieved by the decision of the panel is entitled to judicial review of the decision as provided in Minn. Stat. §§ 14.63 to 14.69.

Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Examples of reasonable accommodations

include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, the Administrative Law Judge must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at 100 Washington Avenue South, Suite 1700, Minneapolis, MN 55401, or call 612/341-7610 (voice) or 612/341-7346 (TTY).

Dated at Minneapolis, Minnesota  
this \_\_22<sup>nd</sup>\_\_ day of November, 2004 .  
CLS/nh

\_\_\_\_\_/s/ Cheryl LeClair Sommer\_\_\_\_\_  
CHERYL LeCLAIR-SOMMER  
Administrative Law Judge  
(612) 341-7600  
TDD: (612) 341-7346

### **NOTICE**

Under Minn. Stat. § 211B.36, subd. 5, this Order is final as to the allegations of the Complaint that are dismissed. A party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

### **MEMORANDUM**

The Complaint alleges multiple violations of § 211B.06 in two pieces of campaign material distributed by Nancy Levitz and the Levitz for City Council Campaign. Although some allegations in the Complaint were dismissed and other allegations, containing sufficient information to support a prima facie violation, will be referred for an evidentiary hearing.

#### **DISMISSAL OF VARIOUS ALLEGATIONS**

The Complainant alleged Nancy Levitz violated Chapter 211B.06 since the campaign material specified she had been appointed to the Grant Planning Commission. Although the statement is misleading, the December 3, 2002 Grant City Council meeting minutes report that Nancy Havlish (also known as Nancy Levitz) was appointed to the Planning Commission for a three year appointment. Even though the appointment was later rescinded, the campaign material only references the appointment, not service on the Planning Commission.

The complaint further alleges the campaign literature distributed on October 12, 2004 contained a false statement that the current council majority wants to “almost **DOUBLE** our taxes in 2005.” This statement has not been shown to be false. The 2004 certified levy to Washington County was \$705,015 and the preliminary levy to the County for 2005 is \$1,264,000. With the campaign material using the modifier “almost” to reference the doubling the taxes, the statement represents an opinion.

The allegation contained in Section 2.b. of the Complaint claims that the statement, that the new road plan would double our taxes, was false. Upon reviewing the estimated 2004 budget in comparison with the 2005 budget for the road plan, the

conclusion can reasonably be reached that the taxes relating to the road proposal may double.

In addition, the Complainant alleged the campaign material included false statements relating to the purchase of a road grader within the proposed road plan. Although the savings generated by the purchase compared to the actual cost of contracting the service in 2003 may recoup the payment for the road grader, the proposed road plan does include loan payments and references the purchase of a road grader. No information was provided that the proposed tax increase was not intended for the purchase of the road grader even though, in the long term, the annual cost may be reduced.

#### ALLEGATIONS REFERRED FOR AN EVIDENTIARY HEARING

The Complaint provides sufficient prima facie evidence of a false statement, contained within 2.a., that the new taxes in the road plan “will NOT BENEFIT taxpayers who “live on a gravel, State, County, or recently paved road.” This definitive statement appears false since the Road Plan documents benefits for gravel and paved roads, an increased schedule for installing new gravel, dust control, shoulder repair, and upgraded paved road base.

The campaign material further states the City of Grant imposed a 5% utility bill tax. The City of Grant Ordinance imposes a franchise fee in the sum of \$2.35 for residential customers. Although the Ordinance acknowledges the franchise fee may result in a surcharge on the customer, the fee is not a percentage but a flat rate depending upon the class of the property. The information supports a prima facie finding that this statement is false.

The Complaint also provides sufficient evidence that the campaign material included false statements of support for contracting rather than purchasing equipment. The campaign literature stated Councilman Haas of the city of Hugo “informs us that **owning & operating equipment costs 3 to 4 times more** than contracting out for the same City services (emphasis in original).” With the information that Councilman Haas never made this statement and that the Hugo City Council agrees the statement was false, the Complaint provides sufficient prima facie evidence to support a finding that the statement is false.

The campaign literature further states the proposed tax increase will be used to build a new heated fire station with an addition to house the new road grader. The Complaint provides sufficient information that this statement is false. Todd Rogers, the Mahtomedi Fire Chief, informed the city of Grant that an extra fire truck could be housed in Grant. Chief Rogers, not a representative of the Grant City Council, suggested a heated pole barn would be sufficient to maintain the temperature required in the truck. Since the campaign literature referenced the actions of the City Council and no action has been taken to purchase or propose a tax increase to build a heated fire station, the information provides sufficient evidence that the campaign material contained a false statement or was designed to injure or defeat a candidate for nomination or election to a public office.

The Complaint alleges the statement, that the proposed tax increase would be utilized to purchase a used fire truck from the city of Mahtomedi, is false. The meeting minutes indicate the City Council discussed their willingness to house an extra fire truck from the city of Mahtomedi within the city of Grant. The statement that the City Council planned to purchase a fire truck from the city of Mahtomedi appears to represent a false statement.

The campaign material further stated the proposed tax increase would “put a museum in the basement of City Hall with bonded funds.” The Complaint provides sufficient prima facie evidence that this statement is false since at the budget workshop a \$15,000 proposed capital fund was to be utilized for mold elimination at the Grant Town Hall basement.

C.L.S.